

ANTI-NEPOTISM BILL

• Mr. KYL. Mr. President, I rise in support of S. 1892, the judicial anti-nepotism bill.

Section 458 of 28 U.S.C. reads: "No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court." There is some debate about the interpretation of section 458. Some hold the view that the statute means what it says—no person related to a judge of a court may be appointed to that same court. But some hold a contrary view. Indeed, in a 1995 memo by Richard Shiffrin of the Office of Legal Counsel, although the OLC conceded that the statutory language appears to restrict presidential appointments to offices or duties in federal courts, the OLC argued that the statute only applies to judges hiring or appointing persons to the courts. Many scholars disagree with this view and with the other memoranda issued by the Administration. Finally, there is also disagreement as to whether section 458 applies to appointments where a judge has taken senior status is a "judge of such court."

For future judicial nominees, the Administration and the Senate must understand the criteria required for Article III judicial appointments. S. 1892 maintains the current prohibition on relatives of judges being appointed to or employed in any job of the court, such as for example, positions as clerks and bailiffs.

S. 1892 amends 28 U.S.C. 458 to clarify that no person may be appointed to be a judge of a court if that person is related within the degree of first cousin to any judge, including a judge retired in senior status of that "same court." Under the bill, "same court" means, in the case of a district court, any court of the same single judicial district; and, in the case of a court of appeals, the court of appeals of a single judicial district.

For example, a person may not be a member of the Federal District Court in Arizona if a related person is already a member of the Federal District Court in Arizona, but related persons may serve simultaneously on federal district courts in Arizona and New Mexico. Additionally, related persons may serve simultaneously on the Northern and Eastern Federal District Courts in California. A person may not be a member of the 2nd Circuit if a related person is a member of that circuit, but related persons may serve on the 2nd and the 7th Circuits simultaneously.

It is important to Note that this act does not apply to the Supreme Court.

The act takes effect on the date of enactment and applies only to an individual whose nomination is submitted to the Senate on or after such date. Thus, the bill would not affect the nomination of William Fletcher.

A thorough study of the constitutional provisions at issue, of the rel-

evant case law, and of prominent legal treatises makes it clear that the bill is constitutional. Indeed, a March 31, 1998 report on the bill by the American Law Division of the Congressional Research Service has concluded that "[a]fter consideration of the text of the Constitution, the precedents, and the historical practice, we believe it to be established that Congress has the authority to fix this and other qualifications for the office of judges of Article III courts. . . ." The Constitution is, in fact, silent on what lower courts there were to be, their composition and jurisdiction, and their powers. Inasmuch as the Constitution "delineated only the great outlines of the judicial power . . . , leaving the details to Congress, . . . "[t]he distribution and appropriate exercise of the judicial power must . . . be made by laws passed by Congress. . . ." *Rhode Island v. Massachusetts*, 12 Pet. (37 U.S.) 657, 721 (1838).

The public policy behind Section 458 and S. 1892 is clear: For the public to maintain a sufficient level of confidence in the integrity and impartiality of its public institutions, those institutions must strive not only to avoid circumstances in which actual impropriety could arise among public servants, but to avoid all circumstances that create even the remote appearance of impropriety. Having close family members serve on the same court would create an appearance of impropriety. Of all the relationships that one judge could have to another—for example, former law partners or members of the same bench for 20 years—a familial relationship is one that is certain to automatically cause a litigant to question the impartiality of a judge.

Litigants must have complete confidence that federal judges will be objective and impartial while on the bench. The institutional integrity of Federal courts requires scrupulous protection of public confidence in the judicial process. Preventing close family members from serving on the same court is a small price to pay to avoid a potential diminution of credibility and impartiality of the Judiciary, one of the Nation's most hallowed institutions.●

TRIBUTE TO MICHAEL J. WILLIAMS

• Mr. CLELAND. Mr. President, I rise today to pay tribute to an invaluable member of my staff, Mike Williams, who has served as my Military Legislative Assistant since I arrived in the Senate in January 1997. Mike joined my staff after serving a great American and one of Georgia's most honored and beloved Senators, Senator Sam Nunn, where he began as an intern while attending Georgia Tech and after graduation quickly became involved in legislative matters, including military issues. After more than five years of public service, Mike will be leaving my staff after the 105th Congress adjourns

to pursue other career opportunities. He will be sorely missed and not easily replaced.

Mike's excellent assistance and invaluable experience made my transition from being Georgia's Secretary of State to a United States Senator and a member of the Senate's Armed Services Committee smooth and successful. He serves as a positive example to us all—a good person who is committed to his family and to continually improving himself. While working full-time for Senator Nunn and then myself, Mike has attended law school in the evening while still finding quality time to devote to his lovely wife Allyson and their beautiful daughter Catherine. Now in his final year of law school at Georgetown, Mike has decided to leave Capitol Hill to pursue a career in the law profession. I wish him well in all of his future endeavors and I know that he will have a lifetime of many more accomplishments and shining moments. Although Mike's invaluable contribution to my staff will be greatly missed, his daily presence in our lives will be missed even more. Mike, thank you for your years of service to me and the people of the great State of Georgia—I am very proud of all you do. You truly are a great American!●

NOTICE OF INTENTION TO MOVE TO SUSPEND THE RULES

• Mr. MCCAIN. Mr. President, I hereby give notice in writing of my intention to move to suspend the provisions of Rule 22 requiring that the following amendment be germane:

AMENDMENT NO. 3711

(Purpose: To define what is meant by the term "discriminatory tax" as used in the bill)

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term "discriminatory tax" means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(v) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—